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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re ARIEL R., et al., Persons
Coming Under the Juvenile
Court Law.

B289141

(Los Angeles County
Super. Ct. No. CK80977)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

MICHAEL R.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County, Nancy Ramirez, Judge. Conditionally affirmed and remanded with directions.

Aida Aslanian, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Sally Son, Deputy County
Counsel, for Plaintiff and Respondent.

The Los Angeles County Department of Children and Family Services (DCFS) filed a petition under Welfare and Institutions Code section 300 alleging several bases for jurisdiction over siblings Ariel R. and Alonzo R., which included the mother's abuse of methamphetamine, the mother's untreated mental illness and a prior domestic dispute between the parents that resulted in the father's arrest. The juvenile court sustained the petition in its entirety, and ordered the children detained.

The children's father, Michael R., appeals the jurisdictional findings pertaining to his conduct only, arguing that DCFS failed to show the domestic dispute between him and the mother placed the children at current risk of harm. Father further asserts that DCFS failed to comply with the inquiry and notice requirements of the Indian Children and Welfare Act (25 U.S.C. §§ 1901, et seq.) (ICWA). We remand the matter to allow the juvenile court to comply with ICWA and otherwise conditionally affirm.

FACTUAL AND PROCEDURAL HISTORY

A. Prior Dependency Proceeding Involving the Children's Sibling Dynasty

Appellant Michael R. (Father) and Lisa L. (Mother) have three children together: Dynasty, born July 2016, and twin brothers Ariel R. and Alonzo R., born June 2017 (the twins).

Prior to the birth of the twins, DCFS filed a petition under Welfare and Institutions Code section 300¹ regarding Dynasty. The petition included multiple allegations related to Mother's abuse of methamphetamine and her untreated mental illness. The petition also contained an allegation predicated on a domestic violence incident between the parents: "On or about 10/01/2016, [the mother and the father] were involved in a violent altercation in which the father punched the mother several times in the face . . . resulting in the mother sustaining a black eye. As a result of the violent behavior on behalf of the father, the Criminal Court . . . issued a 10-year restraining order protecting mother." The allegation further asserted that Father's "violent conduct . . . against the mother places [Dynasty] at risk of serious physical and emotional harm, damage and danger. Additionally, the mother has placed . . . Dynasty at serious risk of harm by allowing the child to be present during subsequent visitation with the child. . ."

The reports DCFS filed in support of the petition included a summary of the information set forth in the police reports regarding the domestic violence incident. According to those reports, Mother told law enforcement that Father struck her with his fist four times, and then took her cell phone and debit card. Mother's roommate told the police she had seen Father hit Mother in the face with a closed fist, and then take her cell phone and debit card. A photograph the police took after the incident showed that Mother had suffered a black eye. Father was charged with robbery, spousal assault and vandalism. As a

¹ Unless otherwise noted, all further statutory citations are to the Welfare and Institutions Code.

result of the incident, the criminal court entered a 10-year restraining order barring contact between Mother and Father.

DCFS's reports also stated that before the agency became aware of the domestic violence incident or the restraining order, Mother and Father had repeatedly traveled together to attend monitored visits with Dynasty. After learning of the restraining order, DCFS informed the parents they were not permitted to visit Dynasty together, and were not permitted to be with one another. Despite these warnings, Mother and Father continued to reside together until Father was incarcerated after having been convicted of robbery.²

In April 2017, the juvenile court sustained the petition in its entirety, and ordered Dynasty, then nine months old, removed from parental custody. Mother and Father were provided reunification services and monitored visitation. Father's services included drug testing (and if necessary drug rehabilitation), a 52-week program for perpetrators of domestic violence and a parenting program.

B. The Current Dependency Preceding

1. The referral and initial investigation

In June 2017, DCFS received a referral alleging general neglect of Ariel and Alonzo R. The referral reported that Mother had admitted she used methamphetamine during her pregnancy with the twins, and that the children's father was currently incarcerated. The referring party stated that the children had

² The record indicates that Father was sentenced to 10 years in prison on the robbery charge, which was unrelated to the robbery charge he had incurred as a result of the domestic violence incident.

been tested for methamphetamine, and the results would be available in approximately one week.

After receiving the referral, DCFS contacted Jamie Colman, the social worker who was assigned to the dependency case involving Dynasty. Colman informed the agency that Mother had not been compliant with her case plan, explaining that she had missed numerous drug tests and had failed to obtain treatment for her mental illnesses.

With DCFS's approval, Mother arranged to have the twins released from the hospital to Mother's godmother, Brenda Samuels. Several days after the children's release, however, Samuels reported that Mother had traveled to Samuels's house while she was at work, and removed the twins from the babysitter's custody. DCFS contacted Mother and informed her that a detention hearing had been scheduled for the twins, and that a warrant would be issued if Mother did not surrender the children. Mother refused to disclose her location, but told DCFS she would attend the detention hearing.

2. Section 300 petition and detention

On June 22, 2017, DCFS filed a section 300 petition alleging Ariel and Alonzo fell within the jurisdiction of the juvenile court under subdivisions (a), (b) and (j). The petition included multiple counts that were based on Mother's current abuse of methamphetamine and her untreated mental illness.

The petition included three additional, identically-worded counts under subdivisions (a), (b) and (j) predicated on the domestic violence incident that had been alleged as a basis for jurisdiction in Dynasty's dependency proceeding: "On or about 10/01/2016, . . . the mother and father engaged in a violent altercation in that the father repeatedly struck the mother's face,

inflicting swelling and bruising to mother's eye. The mother failed to protect the children's sibling, [Dynasty] by allowing the father to be present for the sibling's visit with the mother in violation of a restraining order protecting the mother. The children's sibling [Dynasty] is currently a dependent of the Juvenile Court due to the violent altercation. Such violent conduct on the part of the father against the mother and the mother's failure to protect the sibling endanger the children's physical health and safety and place the children at risk of serious physical harm. . . ."

DCFS filed a detention report in support of the petition that included a summary of the parents' open case involving Dynasty, and the agency's investigation of the current allegations. DCFS concluded that the twins were at "very high risk for future abuse," and recommended that the court detain them from Mother.

At the detention hearing, the juvenile court found DCFS had provided prima facie evidence that both children were persons described in section 300, and ordered them removed from the home.

C. Jurisdiction and Disposition

1. Jurisdiction and disposition report

On August 18, 2017, DCFS submitted a "Jurisdiction/Disposition Report" stating that Mother had declined to speak with the agency regarding the case, and that Father remained incarcerated. DCFS also reported that both twins had tested positive for methamphetamine, confirming that Mother had used the drug during her pregnancy.

The report included a summary of the dependency proceedings involving Dynasty, and copies of the police reports describing the October 2016 domestic violence incident.

DCFS recommended continued detention of the children, and reunification services for both parents. The court scheduled a contested adjudication.

2. The contested adjudication

At the adjudication, Father's counsel moved for dismissal of the counts alleged against him, contending there was no evidence that the domestic violence incident, which had occurred months before the twins were born, placed the children at current risk of harm: Mother's counsel joined Father's request, asserting that the "Department ha[d]n't met its burden [of] tying that [domestic violence incident] to the current risk to children[, who were] born substantially after that." Mother's counsel also sought dismissal of the other allegations, contending there was insufficient evidence to show her past drug use or mental illness presented a current risk of harm to the twins.

DCFS and the children's counsel, however, argued that the court should sustain all counts against both parents. DCFS asserted that the counts alleged against Father were substantiated by the police reports describing the October 2016 domestic incident.

The court sustained the petition in its entirety, and ordered that the children remain detained. The court provided both parents reunification services and monitored visitation. Father's reunification services included a 52-week program for perpetrators of domestic abuse and a parenting program.

DISCUSSION

A. Father's Challenge to the Jurisdictional Findings Is Not Justiciable

Father appeals the jurisdictional findings pertaining to the October 2016 domestic violence incident, arguing that it was improper for the juvenile court to rely on an allegation that had been adjudicated against him in a prior proceeding (Dynasty's case) as a basis for jurisdiction in the current dependency proceeding. Father does not challenge the additional jurisdictional findings as to Mother, and acknowledges that, even if his appeal is successful, "there [will] still be ample grounds for jurisdiction over the twins due to the endangerment posed by Mother's continuing drug abuse."

DCFS argues that we should not consider Father's challenge to the jurisdictional findings because it is not justiciable.

1. Application of the justiciability doctrine in dependency proceedings

"It is a fundamental principle of appellate practice that an appeal will not be entertained unless it presents a justiciable issue. [Citation.] The [justiciability] doctrine . . . requires an appeal to concern a present, concrete, and genuine dispute as to which the court can grant effective relief." (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1490 (*I.A.*)). The term "effective relief" means "a remedy that can have a practical, tangible impact on the parties' conduct or legal status. . . . When the court cannot grant effective relief to the parties to an appeal, the appeal must be dismissed." (*Id.* at p. 1491.)

Numerous prior decisions have applied the justiciability doctrine in cases where, as here, one parent challenges the jurisdictional findings involving his or her conduct, but does not

challenge additional jurisdictional findings involving the other parent's conduct: "Because the juvenile court assumes jurisdiction of the child, not the parents, jurisdiction may exist based on the conduct of one parent only. In those situations an appellate court need not consider jurisdictional findings based on the other parent's conduct." (*In re J.C.* (2014) 233 Cal.App.4th 1, 3 (*J.C.*); see also *In re D.M.* (2015) 242 Cal.App.4th 634, 645 (*D.M.*) ["[A] jurisdictional finding good against one parent is good against both. More accurately, the minor is a dependent if the actions of either parent bring [the minor] within one of the statutory definitions of a dependent. [Citations.]' [Citation.] 'For this reason, an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings'"]; *I.A.*, *supra*, 201 Cal.App.4th at pp. 1491-1492.)³

A reviewing court, however, retains "discretion to reach the merits of a challenge to any jurisdictional finding when that

³ Our courts have also applied this principle in cases where a parent has sought review of some, but not all, of the jurisdictional findings sustained against him or her. (See generally *In re M.W.* (2015) 238 Cal.App.4th 1444, 1452 (*M.W.*) ["As a general rule, a single jurisdictional finding supported by substantial evidence is sufficient to support jurisdiction and render moot a challenge to the other findings"]; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451 ["When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence"].)

finding may be prejudicial to the appellant.” (*D.M.*, *supra*, 242 Cal.App.4th at p. 639.) Our courts have generally exercised their “discretion to reach the merits of [one] parent’s jurisdictional challenge in three situations: (1) the jurisdictional finding serves as the basis for dispositional orders that are also challenged on appeal; (2) the findings could be prejudicial to the appellant or could impact the current or any future dependency proceedings; and (3) the finding could have consequences for the appellant beyond jurisdiction.” (*J.C.*, *supra*, 233 Cal.App.4th at pp. 4-5 [citing *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763]; see also *M.W.*, *supra*, 238 Cal.App.4th at p. 1452 [discretionary review appropriate where the jurisdictional finding involves a “pernicious” form of misconduct, including sexual abuse or physical abuse of the child].)

In *I.A.*, *supra*, 201 Cal.App.4th 1484, the court considered the justiciability of an appeal that sought review of jurisdictional findings pertaining to the conduct of only one parent. As in this case, the juvenile court sustained allegations based on the mother’s drug abuse, and domestic violence between the mother and father. The father appealed the findings pertaining to him, arguing “there was no evidence [the domestic violence incidents] presented a substantial risk to the minor.” (*Id.* at p. 1489.) The court concluded the appeal did not raise a justiciable issue: “Any decision we might render on the allegations involving Father will not result in a reversal of the court’s order asserting jurisdiction. The juvenile court will still be entitled to assert jurisdiction over the minor on the basis of the unchallenged allegations. Further, the court will still be permitted to exercise personal jurisdiction over Father and adjudicate his parental rights, if any, since that jurisdiction is derivative of the court’s jurisdiction over the minor

and is unrelated to Father's role in creating the conditions justifying the court's assertion of dependency jurisdiction." (*Id.* at p. 1492.)

The court rejected the father's request that it "exercise discretion to consider his appeal," explaining: "While there is no doubt the court retains the discretion to consider alternative jurisdictional findings [citations], Father has not suggested a single specific legal or practical consequence from this finding, either within or outside the dependency proceedings." (*I.A.*, *supra*, 201 Cal.App.4th at p. 1493.)

2. *We decline to exercise our discretion to review the jurisdictional findings regarding Father*

Although Father acknowledges the juvenile court will retain jurisdiction of the twin children even if his challenge is successful, he contends we should nonetheless exercise our discretion to review the jurisdictional findings.

Like the appellant in *I.A.*, however, Father has not identified any specific legal consequence or prejudice that may result from the jurisdictional findings made against him in this case. Although Father's opening brief asserts the jurisdictional findings are "likely to prejudice [his] rights to his children in the present and future," the brief fails to articulate the nature of any such prejudice. Father's reply brief similarly asserts that the findings "sustained against him w[ere] prejudicial to his parental rights to the twins," but again fails to describe the specific nature of that prejudice. Father's conclusory assertion of prejudice is insufficient to warrant our exercise of discretionary review. (See *J.C.*, *supra*, 233 Cal.App.4th at p. 4 [dismissing appeal of jurisdictional finding where parent claimed to have been prejudiced, but "ha[d] not suggested any legal or practical

consequences that might flow from th[e] finding either within or outside the dependency proceedings”].)

The possibility of any future prejudice is especially unlikely in this case because the juvenile court previously sustained a jurisdictional allegation involving the same domestic violence incident in Dynasty’s dependency proceeding. Given the prior adjudication, even if we were to reverse the jurisdictional findings as to Father in this case, he would still be left with a prior sustained finding that involved the exact same conduct.

Moreover, the court’s disposition order (which Father has not challenged) does not require him to perform any services that he was not already ordered to perform in Dynasty’s case. Indeed, Father specifically acknowledges that the juvenile court “ordered the identical services” it had previously imposed in Dynasty’s case, which include a 52-week program for perpetrators of domestic violence and a parenting program. Accordingly, the jurisdictional findings Father has challenged did not result in the imposition of any additional requirements beyond those that he had to perform to reunify with his other child.

In sum, because Father has failed to establish any actual or threatened prejudice from the jurisdiction finding as to him, we decline to consider that portion of his appeal on the ground that there is no justiciable controversy.

B. Limited Remand for ICWA Compliance

In addition to challenging the juvenile court’s jurisdictional findings, Father argues we must reverse the court’s “ICWA findings as to the twins” because DCFS failed to conduct an adequate investigation into the children’s possible Cherokee ancestry. DCFS concedes error and asserts that “the proper

remedy is a limited remand . . . directing DCFS to complete further inquiry, . . . and to issue notices, if appropriate.”

1. Factual background

Prior to the contested adjudication, Father submitted an ICWA-20 form (Parental Notification of Indian Status) indicating that he may have Cherokee ancestry. At the arraignment hearing, Father told the court he was uncertain whether any family members had Cherokee ancestry, and identified the paternal grandfather as the person who was most likely to know more information about the issue. The court directed Father to provide DCFS with the paternal grandfather’s contact information, and deferred findings on ICWA.

DCFS’s jurisdiction report, filed in August 2017, stated that the agency had been unable to speak with Father regarding his possible Cherokee ancestry due to his incarceration. The report further explained that DCFS had attempted to contact the children’s paternal aunt (Father’s sister) and paternal uncle (Father’s half-brother) regarding the issue, but had obtained no further information. DCFS advised the court it had not mailed notices to any Cherokee tribes or to the Bureau of Indian Affairs because it was “trying to obtain additional” information about Father’s ancestry.

In October 2017, DCFS filed a last-minute information for a status hearing regarding both this case and Dynasty’s case. In the information, DCFS recommended that the court find ICWA inapplicable to Dynasty “as to her mother only,” clarifying that “ICWA notices for Dynasty as to father . . . are still pending.”⁴

⁴ The record shows that Mother informed the court she might have Sioux ancestry, and that DCFS had sent notices to the Sioux tribes. After receiving no responses to those letters,

DCFS did not submit any evidence indicating that it had sent notices pertaining to Father's claim of possible Cherokee ancestry.

At the October 5, 2017 status hearing, the court found it had "no reason to know [any of] the children are Indian children under [ICWA]." At a subsequent hearing, the court confirmed that it had "made ICWA findings as to the twins on October 5, 2017"

2. Summary of applicable law

ICWA was enacted "to promote the stability and security of Indian tribes and families by establishing minimum standards for removal of Indian children from their families and placement of such children 'in foster or adoptive homes which will reflect the unique values of Indian culture. . . ." (*In re Levi U.* (2000) 78 Cal.App.4th 191, 195.)

"[N]otice to Indian tribes is central to effectuating ICWA's purpose. . . ." (*In re Michael V.* (2016) 3 Cal.App.5th 225, 232.) "When a court 'knows or has reason to know that an Indian child is involved' in a juvenile dependency proceeding, a duty arises under ICWA to give the Indian child's tribe notice of the pending proceedings and its right to intervene. [Citations.] Alternatively, if there is insufficient reason to believe a child is an Indian child, notice need not be given." (*In re Shane G.* (2008) 166 Cal.App.4th 1532, 1538 (*Shane G.*))

"The circumstances that may provide probable cause for the court to believe the child is an Indian child include, but are not limited to, the following: A person having an interest in

DCFS recommended that the court make a finding that ICWA was inapplicable to Dynasty as to Mother. The parties have not raised any issue regarding ICWA compliance as to Mother.

the child . . . informs the court or the county welfare agency . . . or provides information suggesting that the child is an Indian child. . . .’ If these or other circumstances indicate a child may be an Indian child, the social worker must further inquire regarding the child’s possible Indian status. Further inquiry includes interviewing the parents, Indian custodian, extended family members or any other person who can reasonably be expected to have information concerning the child’s membership status or eligibility. [Citation.] If the inquiry leads the social worker or the court to know or have reason to know an Indian child is involved, the social worker must provide notice.” (*Shane G.*, *supra*, 166 Cal.App.4th at pp. 1538-1539.)

3. A limited remand is necessary for further inquiry and notice under ICWA

Both parties contend the juvenile court “erred in finding . . . ICWA did not apply to the twins” because there is no evidence that DCFS ever contacted the paternal grandfather, who Father identified as the individual most likely to know about the family’s possible Cherokee ancestry.

We agree that, based on the evidence in the record, it does not appear DCFS conducted an adequate investigation into the children’s Cherokee ancestry. Given Father’s statements to the court, it was improper for the court to find ICWA did not apply without any prior attempt to contact the paternal grandfather to discuss possible Indian ancestry.

We also agree with the parties that the proper remedy in this case is to “leave the juvenile court’s orders in place and effect a ‘limited remand’ to effect compliance with the ICWA.” (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 187; see also *In re Brooke C.* (2005) 127 Cal.App.4th 377 [proper remedy is a

“limited remand to the juvenile court for the agency to comply with ICWA notice requirements, with directions to the juvenile court depending on the outcome of such notice”]; accord, *In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 129.) We therefore remand the matter to the juvenile court with directions that DCFS complete further inquiry regarding Father’s possible Cherokee ancestry, which shall include contacting the paternal grandfather, and issue notices if appropriate.⁵

DISPOSITION

The judgment is conditionally affirmed, and the matter is remanded with directions to comply with the inquiry and notice provisions of ICWA, if the court has not already done so. If, after proper inquiry and notice, it is determined the twin minors are Indian children and ICWA applies to these proceedings, the juvenile court shall conduct a new jurisdictional hearing.

ZELON, J.

We concur:

PERLUSS, P. J.

FEUER, J.

⁵ During the pendency of this appeal, the juvenile court entered a minute order, dated September 20, 2018, that suggests DCFS may have conducted additional inquiry and notice regarding ICWA. The minute order directed DCFS to prepare a report “to include ICWA for minor” Ariel R., and to send “ICWA notices . . . out for Minor.” It is unclear whether the court’s orders pertaining to ICWA address or otherwise resolve the ICWA issue the parties have raised in this appeal.